

DELAWARE COUNTY BOARD OF SUPERVISORS

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June 30, 2022

Dr. Mary Bassett, Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza,
Albany, NY 12237

RE: New York City Watershed Filtration Avoidance Document (FAD) Comments

Dear Dr. Bassett:

I would like to thank you for the opportunity to comment on the draft Revised 2017 Filtration Avoidance Determination (FAD). After careful review and consultation with our scientific partners, I would submit the following comments on behalf of Delaware County and our local partner organizations, including the Delaware County Soil and Water Conservation District.

As you are aware Delaware County is the western most county in the West of Hudson watershed with 17 of our 19 townships as signatories to the 1997 Memorandum of Agreement (MoA). With slightly more than 50% of our county's land mass within the boundaries of the New York City watershed we are an involved and active partner in watershed programming. We have made substantial investments not only in personnel, but also in Pilot projects, capital investments and program development over the past 25 years in an effort to provide for a scientifically driven process to watershed protection.

In the early 1990's after New York City began adopting rules and regulations in the upstate watersheds, in the name of water quality protection, and to avoid filtration, Delaware County led the West of Hudson communities against sweeping regulations that would harm our local economic viability and destroy our way of life. Through scientific investigation, innovative thinking and a commitment to our residents to preserve our communities we were able to fight against those sweeping regulations and create a more robust suite of watershed programs that could meet both water supply needs as well as provide for economic stability of the upstate communities. As the watershed programs have evolved we have remained committed to these basic principles.

New York City has served, at various times, as a partner, a funder, a resource, and a frustration. Through it all, we have remained constant. We are the experts in the field, both managing and learning from our resources.

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We've improved farming methods, stream management, wastewater disposal, solid waste management and land use practices, by dedicating not only City money, but our own taxpayer dollars. We have and still do believe you cannot separate watershed management from the people – our people – that are responsible for it.

The majority of our comments on the draft Revised FAD concern the continued implementation of the existing programs, the future of programming to address recommendations of the National Academy of Science, Engineering & Medicine (NASEM) report released in 2020 and hurdles that have caused problems with implementation of the 2017 FAD. We had previously submitted a detailed letter regarding the Land Acquisition Program (LAP) and the Streamside Acquisition Program (SAP). We would like to state at this time, those comments are in addition to this letter and should be considered as part of our overall comment submission.

COVID-19 Pandemic (the Pandemic)

I will begin with the Pandemic. As was noted in the Revised FAD the Pandemic halted many of the activities that support watershed management programming and delayed payments and contract reviews for renewal, impeding the ability of the watershed partners to meet the goals as established in the 2017 FAD. Although this is clearly a unique situation and it could not have been anticipated, it has had a large effect on the way partners communicate and the manner in which negotiations have taken place over the past two (2) years. Zoom meetings, conference calls and limited access to NYC DEP staff made it difficult to participate effectively in conversations regarding implementation of programs. This includes the SAP implementation discussions as well as the review meetings of the NASEM report. Most meetings were well attended with many of them having more than 80 participants, but the format did not allow for effective dialog regarding specifics and limited time for conversation that has traditionally led to compromises and further dialog, improving programs.

Delaware County would request that given the continued impacts of COVID outbreaks and the threat of a future shut down, a protocol be put in place to address these impacts. We would also request that future meetings and negotiations go back to an in-person format or at the very least a hybrid of in-person and virtual meeting formats. We certainly understand the threat to health and safety has necessitated these changes, but we would like to see things go back to a more traditional format, even if that means a limited number of representatives in-person for each stakeholder to allow for proper social distancing and protective measures.

Administration and Contracting

In Delaware County specifically, the pandemic played a key role in delaying the contract renewal for the Delaware County Soil and Water Conservation District stream program, hobbling staff and essentially shutting down the program for several months. This delay cost valuable time in project implementation and increased project deliverables for the following construction season, putting an unnecessary burden on staff. In fact, delays in contract reviews, auditing procedures and design reviews has made administration and implementation at the local level near impossible at times.

It is for these reasons we must reiterate many of the comments submitted by the Catskill Watershed Corporation (CWC). Our "partnership" role has been reduced to more of a contractor relationship and the expectations for program implementation has become a moving target for deliverables. Given the length of time many projects take to close-out; we have experienced "new" requirements for submission that were not previously needed. This has left us scrambling to provide documentation that was not properly logged or putting us in the position to not be able to provide it at all. As a County we, along with our partners, administer millions of dollars in funding

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from local, state and federal sources on a daily basis. The City funded programs are by far the most difficult to administer and are often the source of much frustration for our program auditors and account clerks.

We would ask that specific reporting requirements be defined and agreed to upon the development of program contracts that are streamlined and expectations are known from the on-set. This would resolve many delays and would make project reporting and administration easier throughout all City funded programs.

National Academy of Sciences (NASEM) Report

Upon completion of the study conducted, the NASEM provided NYC and their partners with a list of recommendations and goals to meet as the watershed continues to evolve. These recommendations were defined by the programs that administer them and include many of the partner agencies that are engaged to carry out program deliverables on behalf of NYC.

Recommendation - Among the entire suite of Watershed Protection Programs, the Stream Management Program is particularly commendable.

This recommendation highlighted the extensive partnerships and the science based approach that are the corner stones of the stream program success. The NASEM went on to recommend, ***The Stream Management Program, in collaboration with others, should move into vigorous data analysis even as new data are collected.*** They further recommended, that ***the New York City Department of Environmental Protection (NYC DEP) should continue to identify areas that are, or might become, sources of fine sediment in tree-covered terrain, and to monitor those sites as well as restored reaches.***

These are particularly important recommendations because when coupled with the recommendation ***to build upon the early success of the Catskill Streams Buffer Initiative (and the USDA Conservation Reserve Enhancement Program), the New York City Department of Environmental Protection (NYC DEP) should identify riparian forest buffer projects that require maintenance (e.g., invasive plant control, deer fencing, enrichment or replacement planting, watering) to realize their full ecological and protective potential,*** it highlights the need for stewardship upon completion of projects that has lacked in current programming.

Stewardship has long been a challenge as funding for long term stewardship has been limited in all watershed programs including land acquisition, streamside acquisition, Watershed Agricultural Protection (WAP) programs and the Watershed Agricultural Council (WAC) easement program. All of these programs have made substantial investments in watershed protection with little to no planning or funding for long term stewardship, protection or even repair.

The one point of disagreement with the NASEM recommendations is that agricultural lands go fallow when agriculture ceases to exist on the lands. Agriculture is the largest industry, job creator, and financial asset in Delaware County and most of the West of Hudson. WAC easements are first and foremost a tool to protect agricultural lands from development and to increase and enhance agricultural endeavors. Without proactive and creative stewardship as well as added investments in BMPs these lands can go fallow very easily even with an easement in place. This then becomes underutilized lands that cannot be used to their greatest potential, agriculture.

The revised FAD recommends defunding the Farm Transition Program. We strongly disagree with the loss of this programming as it is an important stewardship tool needed to help agricultural lands remain in agriculture over

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time. In Delaware County our most recent agricultural district 8-year review realized a net loss of 1500 acres of land out of the district as they are no longer in agriculture. Some of these acres were fallow lands that had been previously used as active agricultural land and purchased by a second home owner with no interest in agriculture, therefore leading to removal from the district. Properties with WAC easements are potentially a greater threat for loss to the districts over time without active transition programming due to the nature of the easements limiting use to agricultural practices with little other reuse potential for community sustainability, job creation or development. A viable Farm Transition program can work diligently to help current farmers and potential future farmers meet through the program, encouraging and assisting with purchase, lease or rent to own opportunities to help with the continuation of agricultural practices on lands as farmers retire, move to next generation farms and evolve agricultural practices.

The programs that are managed locally through the various contracts with New York City have been successful throughout the course of the MoA due to the local stewardship that allows for continual monitoring and program changes. Most changes are made to suit the needs of the programs and to account for new scientific measures as they are developed or deemed better for these purposes. The objectives change as improvements are made and the goals are modified to deal with all changes that influence water quality. It is important to understand the complexity of the components as they work together to impact water quality as well as long term community sustainability. The success of the watershed programs is the comprehensive and multi-pronged approach to management.

Based on these NASEM recommendations and the recommendation to reduce land acquisition, we would request additional funding and program enhancements that would allow for long term maintenance, repair and stewardship in all of the above programs. We would also request a renewed focus on Farm Transition be a priority in the FAD to protect the long term viability of agriculture in the West of Hudson economy.

Recommendation - The NYC DEP should reduce expenditures in the Land Acquisition Program to fund other programs that will lead to more direct improvements in water quality. Programs with greater incremental value include an improved Watershed Agricultural Program, an improved Septic System Program, and the Watershed Forestry Program. This reallocation of funds is based on the seemingly small incremental contributions of the Land Acquisition Program to drinking water quality and its negative effects on community vitality, compared with the likely improvements to water quality from additional resources provided to these other programs.

In the draft FAD revision, DOH indicates that DEP is in compliance with 40 CFR 141.71 (b) (2). That section requires as a condition of the FAD that : “The public water system must demonstrate through ownership and/or written agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the source water.” Delaware County was told that “written agreements with landowners within the watershed” requirement was met by the 1997 MOA, as amended and supplemented by the side agreements and the various program agreements. My previous letter to Commissioner Bassett made clear that Delaware County is conditioning its support for the continuation of the FAD on the end to the core land acquisition program and for SAP to be limited only to towns and villages that opt into the program. That statement was supported by Resolutions from over 26 towns and villages and three counties boards (all of which were unanimous). To our elected officials, the LAP is an open space program – an incentive to the environmental stakeholders to support the FAD at the communities’ expense. The reasons that the elected officials are frustrated with the LAP are fully set forth in their resolutions.

The two primary reasons why the community leaders are frustrated over the LAP are: (1) perpetuity and (2) the land use restrictions (prohibitions) in the DEC required Conservation Easements. With respect to perpetuity, the City is a foreign nation taking portions of our community and sequestering the natural resources and land area

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(wind, sunlight, water, agricultural soil, minerals, developable space) forever. The DEC conservation easement operates as the iron curtain making large sections of our community subject to foreign control. The SAP program is potentially the most problematic because our communities were settled in the low lying areas along the stream corridors. The City does not need perpetual ownership because it has the protections in Watershed Rules and Regulations (e.g., impervious surface buffer from all watercourses, stormwater regulations, and septic regulations). The communities accepted those regulations as their obligation in the MOA and their acceptance was necessary to meet the “written agreements with landowners” FAD requirement. All of the land use decisions regarding these properties in the middle of our communities are made by either DEC employees, DEP employees and/or by a third party land trust board. All of those individuals are tasked and required to protect the water quality/open space – not community sustainability. As we get further and further from the MOA (1997), State officials are beginning to view us more as members of the public entitled to submit comments (not critical and necessary partners to the FAD/MOA). In other words, as time progresses, people will forget the MOA and the partnership it created and the conservation easements and those tasked with overseeing them will dominate/control.

In order to be permitted to acquire land in fee to be held in “perpetuity”, the MOA establishes a variety of obligations that are intended to mitigate the impact of the LAP on community sustainability. Those conditions include, but are not limited to, MOA Sections 71, 72, 79, 81, 148, 151, 153 and 181 and the “December 27, 2010 Agreements Among West of Hudson Watershed Stakeholders concerning NYC DEP's Continuation of Its Land Acquisition Program” Sections 15, 17, 19, and 23. Section 82 of the MOA entitled: “Lands Held in Perpetuity for Watershed Protection” provides as follows: “the city will grant to NYSDEC a conservation easement that shall run with the land on all acquired in fee under the land acquisition program to ensure that such land is held in perpetuity in an undeveloped state in order to protect the watershed in the New York City drinking water supply.” Instead of incorporating the community protection provisions listed above into the Conservation Easement, the DEC Conservation Easement limited what DEP could do with the land. DEP bought the land to protect water quality; if the City does not protect water quality, the City loses its FAD. The most critical land owned by DEP is the land surrounding its reservoirs which is not subject to the same restrictions. DEP does not need more incentive or mandates to protect water quality – maintaining the FAD is enough incentive. As a result, the restrictions required by DEC were to treat the land as another parcel in the open space inventory. Instead of supporting the goals and principles of the MOA (including MOA Sections 71, 72, 79, 81, 148, 151, 153 and 181), the DEC Conservation Easement conflicts with those goals.

The regulators have failed to acknowledge or take into consideration the impact of the 2019 Climate Leadership and Community Protection Act (“CLCPA”) on the demand for land. At the same time that the regulators require the City to purchase large portions of our land area to prevent development and thus protect water quality, Commissioner Seggos issued a decision that Indian Point’s nuclear power plant best available control technology for their non-contact cooling is the early termination of the plant – the closing of the plant. In April, 2020, Indian Point was required to shut down Unit 2, and in April, 2021, Indian Point was required to shut down Unit 3. As of 2022, all of the **16.7** million megawatt-hours of zero emission electricity are being replaced by natural gas, increasing NYC’s fossil fuel dependency to above 90 %. In November 2021, NYSEDA submitted a petition to the PSC seeking approval and statewide ratepayer funded subsidies for two massive transmission projects to bring non-fossil fuel electricity to NYC to replace the zero-emission electricity lost from the closure of Indian Point. The Petition states that “[t]he selected projects are expected to deliver **18** million megawatt-hours of renewable energy per year to Zone J (i.e., New York City), more than a third of New York City’s annual electric consumption, from a diverse generation portfolio including onshore wind, solar and hydroelectric power from Upstate New York and Québec. ...Total investment into both projects is expected to amount to **nearly \$24 billion.**” Last month, the PSC approved the petition. One of the two transmissions line will start in Delhi in Delaware County and proceed south through Sullivan County. It would take a wind farm the size of Albany County to meet the onshore

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wind capacity required to replace the **16.7** million megawatt-hours of zero emission electricity lost by the closure of Indian Point. The DEC Conservation Easement prohibits that the land purchased by DEP from being used for transmission lines or solar farms. The wind and solar projects above 25 megawatts are exempt from local review, DEP regulations and SEQRA. The critical point is that due to the CLCPA and the closure of Indian Point, the farmland, forest land, and developable land within Delaware County has to compete with DEP's LAP, WAC's Conservation Easement Program, wind and solar developers, transmission lines and carbon sequestering proposals. As a result, DEP's LAP (and its perpetuity restrictions) have a much greater potential of impeding the development and necessary infrastructure required for a sustainable community.

Proposed Solid Waste Management for Watershed Communities

Delaware County has been a leader in the management of municipal solid waste and recycling programs. Our current facility is a key example of a "clean" operation that utilizes the best science in disposing of municipal solid waste. The development of our composting facility (which is one of only two in the country), allowed us to add several years to the life of our facility while allowing us to continue to serve our local communities and businesses as well as support the disposal of NYC funded wastewater program wastes. Recent recommendations for proposed changes by the NYS DEC will jeopardize our ability to continue on this path. Given the details surrounding this issue, a supplemental letter from our legal counsel, Young & Sommer, will be provided under separate letterhead. However, please note these comments are fully supported by Delaware County.

Watershed Agricultural Council (WAC)

As previously stated agriculture is an essential part of economic sustainability and is part of the aggressive Climate Act recommendations from New York State as an active landscape to sequester carbons, further creating a green economy in New York State. The ongoing management and evolution of agriculture is essential to meeting these local, regional and state goals. As we continue to support agriculture on all levels it is necessary to look at agriculture and agricultural practices as evolving, requiring flexibility in easement management. As this is an important issue, Delaware County would like to address the concerns regarding unanimous consent at the easement committee meetings. We have seen in recent years important added value uses including the use of hoop houses and glamping denied on the dissenting votes of one or two members, in essence creating a veto power. This has hindered the committees' ability to be flexible and limiting the ability to shift with changing agricultural needs that will meet the primary objective of the easement to preserve agricultural lands for agriculture in the future.

To add to the concerns with the unanimous consent Delaware County is feeling the impacts of the New York State push to develop renewable energy projects. These projects, especially solar development, are in direct competition for agricultural lands. When lands go fallow they become prime for these types of projects, removing them from agricultural production forever. Recent WAC easement committee applications for variance have included transmission lines and community infrastructure that were denied based on the votes of one or two members, further creating competition for limited lands within the county to meet these demands. The Farm Transition program and the use of a more democratic voting system will allow WAC to work more cohesively with the local communities to meet all of the demands for this limited amount of productive land within the agricultural community and remove the appearance of a veto power from any one partner.

Delaware County would ask that the funding for WAC Farm Transition be preserved and program development be implemented as soon as possible. We would also ask that there be consideration given to the end of

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unanimous consent for the WAC easement committee to allow for the active preservation, transition and enhancement of agriculture within the watershed.

Socioeconomic Study and Analysis

Delaware County fully supports the mandate for a community sustainability study to be completed in the West of Hudson watershed. It is important that this study be a priority and be used to inform the implementation of other City funded programs, including LAP and SAP. It is also essential in evaluating the needs of the local agricultural community and the other City funded programs that impact local businesses and industries that support our overall economy.

Our local teams recognize the importance of sound long term land management, scientifically based programs and measurable results. It is important to have local commitment, investment and ultimately local buy in and advocacy. These are the key ingredients to the success we have seen over the past 25 years. The high quality of New York City's drinking water is a direct result and an example of the importance of sustainable communities in a populated watershed. Sustainable communities are more capable of making investments in the professionals and experts needed to accomplish this high level of stewardship. In Delaware County that equates to no less than 175 professionals working on watershed issues every day. These professionals are supported both through NYC funded programs like those at WAC, CWC and SWCD and the Delaware County tax payers through programs like planning, economic development, public works and watershed affairs. All of these programs work in harmony as one large watershed community on behalf of NY City's watershed, supporting clean water while also working to protect the vibrancy of our local economy.

Delaware County didn't choose to be the host of the New York City Drinking water system, but we are committed to stewardship of the Watershed and providing our downstate neighbors with pristine and safe water. Every day we make decisions and take actions to protect this resource. However, there are some issues that threaten how well we can continue to perform our role of stewardship, notably a shrinking population and economic base. I will note that Bronx and Delaware Counties have the lowest per capita incomes of counties in New York State. The multi-party watershed agreement pledges watershed economic vitality as well as public health protection, in recognition that this area is far from wealthy.

Delaware County has proven to be a leader in looking at scientific solutions to watershed management. As already stated we are greatly interested in the scientific foundations of the watershed program. Like New York City DEP, we are users of this scientific information for environmental management and planning. The watershed program needs to be scientifically and technically sound. If not (1) it may not deliver what is needed; (2) it may have too many unintended effects on us and be unreasonably expensive for New York City; and (3) it will be extremely difficult to gain voluntary cooperation of the local people who are the most important for protection.

Besides knowing the true connection between our land activities and water quality, we are particularly interested in socioeconomic science perspectives related to local economic vitality, which we consider essential to being able to play our water quality protection role. To this end, we connect our economic health to the human health risk in New York City. As we accept our responsibility for our actions, how our actions affect the quality of water for 9.5 million consumers, New York City should be actively engaged in Economic Viability efforts within the watershed, because their actions affect our quality of life, and because economically vibrant communities are better positioned and more capable of providing competent and effective water quality protection. The actions of DEP in regulating and implementing the FAD have direct and indirect effects on the vitality of our community.

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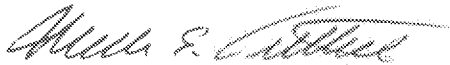
Many of the community statistics that are used to gauge economic sustainability and socioeconomic health vary drastically from the overall county averages. This lends itself to the hypothesis that the presence of the watershed, the rules and regulations and in particular the core land acquisition program may be having an impact on these very important factors that help define a community and its ability to provide basic services that support the community. These impacts have not been studied to any great length and their impacts, although complex by nature, are not fully understood. However, these factors have a profound impact on the viability of watershed communities to sustain and continue to engage in watershed stewardship to the level that has proven to be successful.

We are proud of the progress that has been made in the past 25 years, both programmatically and as watershed partners. We believe the continuation of key programs like those sponsored by the Catskill Watershed Corporation and the Watershed Agricultural Council coupled with locally driven programs such as the Local Flood Mitigation program and the Stream Corridor Management program are essential to the continued success of watershed protection. We also believe there is more work to be done to insure the sustainability of the watershed communities. This includes revisiting the land acquisition program and the socioeconomic impacts of continuing it in its current form. Socioeconomic monitoring is essential to providing long term stewardship.

From our perspective the great experiment that began over 100-years ago to provide water to the largest growing metropolitan area on the east coast has been a success. The living and working watershed that serves NY City provides high quality water as a commodity and the cost paid by NY City through programs like those at WAC, the districts and CWC is a small price to pay for the value of the product received. It is important to continue these programs and provide the flexibility that is necessary to support the agricultural and natural resource industries that have proven to be the greatest stewards of the watershed. However, I will again reiterate without the results of a detailed socioeconomic study and support to provide for community sustainability, along with an end to large open space land acquisition and a reimagined LAP and SAP, Delaware County will withhold support of a new FAD into the future.

I would welcome an opportunity to speak with you if you have any questions regarding this letter.

Sincerely,



Mark Tuthill
 Vice Chairman, Delaware County Board of Supervisors

Cc:

Patrick Palmer, NYS DOH
 Rohit Aggarwala, Chief Climate Officer and Commissioner NYC DEP
 Vincent Sapienza, Chief Operations Officer, NYC DEP
 Paul Rush, NYC DEP
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RE: New York City Watershed Filtration Avoidance Document (FAD) Comments

Dear Dr. Bassett:

Thank you for the opportunity to provide comments on the draft FAD. Please consider these comments as supplemental comments from Delaware County to address a recent proposed solid waste rulemaking initiated by New York State Department of Environmental Conservation (DEC). Delaware County asserts that in this rulemaking DEC is proposing additional disproportionate and inequitable burden on West of Hudson Watershed Communities in contravention of the intent and spirit of 1997 Memorandum of Agreement ("1997 MOA"). Because of the legal nature of this objection, Delaware County has requested that Young/Sommer prepare separate comments on their behalf to explain the County's objections to this rulemaking and its inconsistency with the 1997 MOA.

In the draft FAD revision, DOH indicates that DEP is in compliance with 40 CFR 141.71(b)(2). That section requires as a condition of the FAD that: "The public water system must demonstrate through ownership and/or written agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the source water." Delaware County was told that "written agreements with landowners within the watershed" requirement was met by the 1997 MOA, as amended and supplemented by the side agreements and the various program agreements. The 1997 MOA, as amended and supplemented, took several years to negotiate and it was only through the enormous efforts of both NYSDEC and NYSDOH that all stakeholders were able to agree on a Watershed Protection Program that protected the City water supply and that was fully funded by the City. The West of

Hudson Watershed (and, in particular, Delaware County) are generally rural, financially stressed communities (the median family income in Delaware County is approximately \$49,000 compared to a state average of \$64,000). The 1997 MOA goal was to protect the water quality, obtain the local community buy-in for the program, and protect community sustainability and prosperity. The details of the Watershed Rules and Regulations (“WRR”) were negotiated “word-for-word” with the community representatives and the communities agreed to support their promulgation (including DOH’s approval and adoption) subject to the assurance that the City would pay for their implementation. Consistent with Public Health Law Sections 1104 and 1105, DEC agreed (or implicitly agreed) that it would not single out the West of Hudson Watershed for more stringent regulation (different than elsewhere in the State) in order to avoid placing any additional unfunded and disproportionate or inequitable burden on West of Hudson Watershed Communities (hereinafter “MOA Equal Justice Principal”). In proposing these more stringent regulations for NYC West of Hudson Watershed, DEC has breached this fundamental principal and thus breached the 1997 MOA.

New York City Watershed-Specific Provisions

Previously, the solid waste regulations imposed stricter requirements on the use of fill material only in New York City, Nassau and Suffolk Counties (upon information and belief, the justification was contaminants levels in urban fill in and around NYC and Long Island groundwater water supply aquifer). The regulation did not single out the NYC West of Hudson Watershed for special treatment. With the recent proposal, DEC has expanded the stricter requirements relating to use of fill to encompass the NYC West of Hudson Watershed. Also, DEC has proposed stricter requirements for activities in the NYC Watershed under the provisions governing land application, anaerobic digestion facilities, C&D debris handling and recovery facilities, and waste transporters. A chart summarizing the NYC Watershed-specific provisions is below. These same solid waste areas are addressed in the NYC WRR and the 1997 MOA Watershed Protection Programs. DEP WRR include regulations for the management of solid waste. In or about 2018, DEP considered amending its WRR regulations to include stricter requirements on the use of fill material. The West of Hudson Communities (including and, in particular, Delaware County) opposed those additional restrictions and DEP withdrew them. In 1990, DEP proposed extensive regulation of farms which were vigorously opposed by the West of Hudson Communities. In lieu of farm regulations, the City offered and was required to develop and fund a voluntary program known as the Whole Farm Plan Program. That program has been enormously successful. The comprehensive nutrient management plan (CNMP) and land application restrictions in the proposed regulations are directly in conflict with a voluntary Whole Farm Plan Program.

Since (and even before) the MOA was executed, the understanding/agreement was that neither DEC nor DOH would adopt specific additional restrictions for the NYC Watershed which could potentially relieve the City from its obligation to fund incremental water quality protections. Since the execution of the MOA (and to our knowledge), DEC has not adopted more stringent requirements for NYC West of Hudson Watershed. DEC has taken a different approach East of Hudson; for example, upon information and belief, without local opposition, DEC did adopt additional requirements for stormwater permits in the East of Hudson Watershed (DEC refused to

adopt those restrictions in the West of Hudson Watershed). In MOA Section 144, DEP was required to be financially responsible for any cost arising from the DEC development and implementation of a Phosphorous TMDL for the Cannonsville Basin in Delaware County. Delaware County wants to be clear – the MOA Equal Justice Principal is a fundamental principal of the partnership created by the 1997 MOA (which is the basis for compliance with 40 CFR 141.71(b)(2)).

It is also Delaware County's understanding that DEC did not consult with either DEP or the West of Hudson Communities before issuing its proposed regulations – upon information and belief, this was a DEC initiative proposed without consultation to the Watershed Stakeholders. Had DEC consulted with either DEP or West of Hudson Communities, DEC would have known that the FAD required flood mitigation program is completely dependent on the cost-effective management of the fill material from the expansion of flood plains. The single largest cost is the offsite management of the fill removed to increase the storage capacity of the floodplain. A recent floodplain expanding project completed in the Village of Walton required the removal of 10,000s of cubic yards of fill material. That fill material was classified under the existing Part 360 regulations and managed accordingly (some as clean fill and managed locally; some as regulated fill and incorporated into highway embankments and some as contaminated fill and managed at the Delaware County Landfill). The cost for management of clean fill and regulated fill is primarily the transportation cost, loading, unloading, and storage. The proposed additional restrictions (See 360.12(c)(2)(ix), 360.13(b)(2), 360.13(g)(1), 360.13(g)(2) and 6 NYCRR 364-2.1(12)(b)) will potentially significantly increase the transportation distance, potentially increase the transportation cost (Part 364 hauler) and require more material to be managed in landfill at over \$150 per cubic yard (e.g., \$150 times 10,000 = \$1,500,000). A rough estimate of transportation costs in today's market is about \$10/cubic yard per hour (e.g., increasing the roundtrip transportation from one hour to two hours will increase the transportation cost by \$10/cubic yard). These additional restrictions will add substantial cost to municipal highway projects and floodplain projects and result in filling our landfill with dirt instead of unrecyclable MSW.

Delaware County asserts that the proposed rulemaking is in violation of the 1997 MOA, counter to the objectives of the MOA and FAD, violates DEC CP-29 (environmental justice) and weakens the enforceable agreement required by 40 CFR 141.71(b)(2). As a result, the FAD renewal/update should be delayed until this issue is corrected. Thank you for the opportunity to provide these comments.

**SUMMARY OF WATERSHED-SPECIFIC PROVISIONS IN PROPOSED
REVISIONS TO SOLID WASTE REGULATIONS (6 NYCRR PART 360 ET SEQ.)**

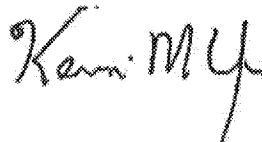
Citation (6 NYCRR)	Regulatory Requirement	Watershed-Specific Provision	Notes
360.12(c)(2)(ix)	Pre-determined beneficial uses. Materials that cease to be wastes when received at	Material consisting only of recognizable, contaminated concrete or concrete products (including those	Per CRIS, "[t]his predetermined use replaces exempt landfilling of

	location of use described in paragraph.	that have embedded reinforcement), asphalt pavement or millings, or brick, rock, Fill Type 1, 2 or 3 or mixtures of these materials may be used for grade adjustment, to raise surface elevation for site development, and to meet requirements of DEC-approved mined land-use plan at site of generation provided certain requirements are met. The beneficial use determination does not apply in Nassau County, Suffolk County, Westchester County, and the Watershed.	these materials pursuant to Part 363, which was limited to 5000 cubic yards per site. Removing this volume limit allows volumes of materials that are necessary for grade adjustment projects to be used without arbitrary restriction.”
360.13(b)(2)	Determination re when excavated material ceases to be a waste.	Fill Type 2 generated within NYCMA Waste Impact Zone ceases to be a waste once it is delivered to the site (outside area, Fill Type 2 ceases to be a waste once it is determined to be Fill Type 2, typically at the site of generation).	
360.13(g)(1)	Other fill use criteria	Prohibits placement of Fill Type 4 in Watershed unless reused within same locality in which it was generated.	
360.13(g)(2)		Prohibits placement of Fill Type 5 in Watershed.	
361-2.2(d)	Land application and associated storage facilities: Exempt facilities	Exempts land application or manure storage facilities for food processing wastes located on farm covered by consolidated animal feeding operation (CAFO) from regulation. Facilities	

		in Watershed are excluded from the exemption.	
361-2.3(b)(3)(viii)	Land application and associated storage facilities: Registered facilities. Land Application facility for unrecognizable food processing wastes or papermill residuals	Land application in the Watershed must be addressed in a comprehensive nutrient management plan (CNMP) to be eligible to register (in addition to meeting other requirements applicable generally)	
361-3.3(b)	Anerobic digestion facilities: Registered facilities. Storage or land application facility for digestate that is not located at a CAFO	Land application in the Watershed must be addressed in a CNMP to be eligible to register (in addition to meeting other requirements applicable generally).	
361-5.2(a)	Construction and demolition debris handling and recovery facilities. Exempts facilities handling Fill Type 2, 3 and "recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcement), brick, rock, asphalt pavement, asphalt millings or mixtures of only the materials in this paragraph."	Limits amount of exempt material that can be stored in the NYCMA Waste Impact Zone under the control of the generator (or a person designated by the generator) that is anticipated to be reused to 500 cubic yards at any one time. (Facilities outside the zone are subject to a 10,000 cubic yard limit, although notice to DEC is required for storage greater than 2,500 cubic yards.)	
6 NYCRR 364-2.1(12)(b)	Waste transporters: Exemptions	For wastes transported within NYC Waste Impact Zone, only Fill Type 1 is exempt from Part 364 requirements. By comparison, outside Zone, transportation of Fill Types 2 and 3 is also exempt from Part 364.	

6 NYCRR 364-3.1(d)(2)	Waste transporters, Registrations: Exemption	Fill Type 2 and Fill Type 3 may be transported by a registered transporter in the NYCMA Waste Impact Zone. (No registration required outside Zone to transport these materials.)	
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Very truly yours,
YOUNG/SOMMER LLC

A handwritten signature in black ink, appearing to read "Kevin M. Young". The signature is stylized with a large "K" and "M".

Kevin M. Young